IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

CRL.A.No. 95 of 2001(A)

SC.64/2000 of II ADDL. SESSIONS COURT, PALAKKAD
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APPELLANT: COMPLAINANT

T.K.UMMER HAJI, S/O. MOIDUNNI HAJI,
RESIDING AT THORAKATTIL,
EDATHANATTUKARA, MANNARKKAD TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: ACCUSED AND STATE
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1. **SOUPY, S/O. MOIDU, THORAKKATTIL HOUSE,**
   EDATHANATTUKARA , MANNARKKAD.

2. **GAFOOR, S/O. SOUPY, THORAKATTIL HOUSE,**
   EDATHANATTUKARA, MANNARKKAD.

3. **MOHAMMADUNNI, S/O. MOIDUPPA,**
   POOVATHUMPARAMBIL,
   EDATHANATTUKARA, MANNARKKAD.

4. **ABU HAJI, S/O. MOIDU, THORAKATTIL HOUSE,**
   EDATHANATTUKARA , MANNARKKAD.

5. **ABDU SALAM, S/O. MAYAMI, PADINJARETHIL HOUSE,**
   EDATHANATTUKARA , MANNARKKAD.

6. **ABDUL RASHEED,**
   S/O.ABU HAJI, THORAKATTIL HOUSE,
   EDATHANATTUKARA , MANNARKKAD.

tss

CRA. NO.95/2001

7. STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI
SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/08/2007, ALONG WITH CRA NO. 714 OF 2000 THE COURT ON 27.09.2007 DELIVERED THE FOLLOWING:

tss

K.R. UDAYABHANU, J.

CRL.A.NO. 95 OF 2001

DATED THIS THE 27th September 2007

JUDGMENT

The appellant is the complainant in C.C.No.117/1997 which along with the crime registered by the police as Crime No.139/1995 on the basis of the F.I.S. rendered by PW1 and subsequently committed as S.C.No.41/1997 were clubbed together and tried as counter case to S.C.No.40/1997 which was taken cognizance of on the basis of the crime 138/1995 in which PW1 herein is the first accused and PW4 herein is the second accused. Dissatisfied with the police omitting four persons, i.e.Soupy, Abu Haji, Abdul Saleem and Abdul Rasheed, and confining the case to the deceased Abbas, Abdul Gafoor and Mohammadunni, PW1 filed the private complaint which was also committed. S.C.No.40/1997 and the present case, i.e. S.C.No. 64/2000 were tried as case and counter.

2. The allegation in the instant case is that on 17-8-199 at about 3.30 p.m. the accused six in number trespassed into the property owned by PW4, the wife of PW1 and attempted to pluck arecanuts and when she obstructed she was kicked on the lower abdomen by the deceased Abbas and twisted her hands. Hearing her cries, PW1 reached to the spot and Abbas beat him on his head and

the 2nd and 3rd accused beat him with sticks. A1 also kicked him on the lower abdomen. A4 and A6 also beat him. The first accused directed the third accused, i.e. Mohammedunni to kill PW1 and A3 took out the knife and aimed at PW1 who warded off and snatched it and brandished the same. When the accused moved away, Pws.1 and 2 escaped.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 7 and Exts..P1 to P8. The defence got examined Dws.1 and 2, the Doctors and got marked Exts.D1 to D4(b), C.D. contradictions and Exts.D5 to D10, the reports of Crime No.138/1995/S.C.No.40/97 and the postmortem certificate of the deceased Abbas and the wound certificates of the deceased Abbas and A3 and A2 respectively. The offences charged against the accused under Sections 143, 147, 148 and 447, 323, 324 read with Section 149 I.P.C. The Sessions Judge acquitted all the accused which is called in question herein.

4. It is the version of PW1 that at the date and time mentioned above the accused along with the deceased Abbas trespassed into the property etc. as mentioned above. It has come out that there was a civil case with respect to the above property in between the 2nd accused and the first accused, Soupy, and that the trial court held in

favour of A1 and it was agreed in the mediation that till the appellate proceedings are over no one shall enter the property. According to PW.1 the property is situated on the north of Nharakulam pond. He has also alleged that the police in the scene mahazar has shifted the scene of occurrence to the southern varamba of Nharakulam at the instance of A2. He has stated that he underwent treatment at Moulana Hospital, Perinthalmanna and Fathima Hospital, Kozhikode. According to him, A5 was armed with chopper and A3 with a knife and the rest with sticks. PW4, the wife of PW1 has also testified in the similar manner as PW1. PWs.3 and 4 are the Doctors who has proved Exts.P5 and P6 wound certificates of PWs.1 and 5 respectively. It is seen that Pws.1 and 5 have sustained only minor injuries, i.e.PW1 sustained abrasion over the right parietal area and right knee and contusion on right upper arm. A4 sustained only an abrasion on the left forearm. PW5 is another occurrence witness who has supported the version of Pws.1 and 4. According to him, he reached the spot hearing the cries of PW4. PW6 is the Head Constable who recorded the F.I.S. and registered the crime in the instant case as well as Crime No. 138/1995. PW7 is the Sub Inspector/investigation officer who has prepared the scene mahazar, i.e. Ext.P8 which is the copy of the scene mahazar produced in S.C.No.40/1997. The scene of occurrence

mentioned herein is as on the southern bund of Nharakulam. The property alleged to be that of PW4 is situated towards the north of Nharakulam. Ext.P2 is the private complaint wherein the scene of occurrence is mentioned at Nellikkunnu Parambu which is said to be owned by PW5. Ext.P8 was proved by PW7. In Ext.P1 F.I.S the scene of occurrence mentioned is the southern bund of Nharakulam. PW1 has denied the genuineness of Ext.P1 F.I.S and contended that he was made to affix his signature in a blank paper. Evidently, the scene of occurrence as per Exts.P1 and P8 on the one hand and Ext.P2 private complaint on the other varies. The trial court found the evidence of Pws.6 & 7 is unreliable; and rightly so. It is also to be noted that the civil court has held that the disputed property is owned by A1. Ext.D2, D3 and D4 series are the contradictions in the C.D.statement of Pws.1, 4 and 5 respectively. Dw1, the Doctor who issued Exts.D7 to D9 wound certificates with respect to the deceased Abbas, Gafoor (A2) and Mohammedunni (A3) respectively and DW2 is the Doctor who conducted the postmortem examination of the body of deceased Abbas and issued Ext.D6 certificate. It can be seen from Exts.D8 and D9 that A2 and A3 have sustained serious stab injuries. The deceased Abbas had sustained head injury as well as stab injuries. It was also found that A1 is a very old man, i.e. 70 years and the case

of the complainant that he kicked PW1 etc. could not be believed. It is the version of the accused that the deceased Abbas, A2 and A3 were attacked by Pws.1 and 4 and their two sons when Abbas sitting on the southern bund of Nharakulam and that A1 stabbed Abbas and A2 and A3, and that Abbas died after two weeks at the hospital. A5 has stated that he has falsely implicated as he removed Abbas, A2 and A3 to the hospital in jeep. A6 has stated that he is the Secretary of the Mosque and that PW1 has enmity towards him on account of the pathway dispute and civil dispute and that the case was falsely foisted against him. It was in view of the above evidence that the court below found that Pws.1, 4 and others were the real aggressors and hence acquitted the accused. In view of the evidence adduced in the matter, I find no reason for deviating from the findings of the court below. The appeal is dismissed.

Sd/-

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A.No.95/2001

J U D G M E N T

27-9-2007